IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

DIRECTOR,STATE INSURANCE & P.F.DEPARTMENT,JAIPUR VS. ASHOK KUMAR VYAS & ANR.
(S.B.C.Writ Petition No.246/02)

Date of order :- 15th December,2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Rameshwar Dave,Dy.Government Advocate for the petitioners.
Mrs.Deepika Vyas, Advocate for the respondents.

REPORTABLE

The petitioners have filed this writ petition against the award dated 28.2.2001 passed by the learned Labour Court,Jodhpur whereby it is answered the reference made to it by appropriate government vide notification dated 11th July, 1005. The reference was made on the question whether removal of the respondent-workman by the petitioners from their services w.e.f. 6th October, 1986 was legal and valid and if not what relief was he entitled to.

Claim set up by the workman before the Labour Court was that he was appointed with the office of the petitioners on daily wages basis as L.D.C. on 2.8.1985. The petitioner issued appointment order to him on 16.8.1985 and thereafter extended his

service by order dated 14.5.1986 for a period of three months. Even after expiry of three months, the respondent continued to work with the petitioners till 6.10.1986 on which date he was removed. The petitioners did not comply the provisions of Section 25-F of the Industrial Disputes Act, 1947 prior to his removal even though the workman had completed 240 days in the calendar year immediately preceding the date of his removal. Three of his juniors Khangar Singh, Radha Kishan and Vimlesh Kumar were retained in employment whereas the respondent was removed. There was thus violation of Section 25-G of the Industrial Disputes Act(for short "the Act"). The case of the workman is that he worked with the petitioners from 2.8.1985 to 31.12.1985 for 117 days and thereafter from 1.1.1986 to 5.10.1986 for 216 days thus in total for 333 days.

The petitioners contested the claim of the workman and filed reply to the statement of his claim. It was stated that the respondent was engaged on daily wage basis @ 15 per day in the month of August, 1985. He thereafter resigned from service from 15th October, 1985 and then was again engaged in November, 1985. It was thereafter the workman in the month of April, 1986 resigned from service on the ground of his illness. Even after the workman was again engaged and allowed to work upto 6.10.1986, the period

of services rendered by him prior to resignation cannot be counted for the purpose of computing 240 days within the meaning of Section 25-B of the Act. The total working days of the workman after he was engaged afresh in the month of May, 1986 till he worked with the petitioners upto 6th October, 1986 came to only 130 days and therefore there was no violation of Section 25-F of the Act. It was stated that in so far as the workman Khangar Singh, Radhey Kishan and Vimlesh Kumar were concerned, all of them were reinstated in compliance of the judgment passed by this Court. The claim of the workman is therefore liable to be rejected.

I have heard Mr. Rameshwar Dave, Dy.Government Advocate for the State and Mrs. Deepika Vyas, for the respondents and perused the record.

Learned counsel for the petitioner argued that the learned Labour Court has committed a serious error on the face of record in not correctly appreciating the letter of resignation submitted by the workman on 30.4.1986 and by treating it as only application for leave on the ground of illness. It was argued that the workman has not completed 240 days in the calendar year immediately preceding the date of his retrenchment because he was

engaged afresh in the month of May, 1986 after he had resigned in April, 1986. If the impugned award is allowed to stand, it would occasion to failure of justice. The appointment of the workman was not made by any acceptable mode of recruitment on the basis of an open competition/examination conducted by the Rajasthan Public Service Commission. It was argued that there was delay of nine years in raising the dispute by the workman and the learned Labour Court ought not to have granted any remedy whatsoever to the workman on the ground of delay alone. The impugned order is therefore liable to be set aside.

In the alternative learned counsel for the petitioners argued that even if provisions of Section 25-F of the Act are held to have been violated , the relief of reinstatement ought not to have been granted to the workman in view of the fact that the respondent workman himself was negligent in raising the dispute after enormously delay of nine years and with regard to the alleged termination of the respondent on 6th October, 1996. The award was passed in the year 2001 which was after 15 years of such removal . The learned Labour Court should have awarded only a lump sum amount of compensation. Learned counsel for the petitioners in support of his argument relied upon the judgment of the Hon'ble

Supreme Court in Municipal Council, Samrala vs. Sukhvinder Kaur , 2006(6) S.C.C. p.516.

On the other hand , learned counsel for the respondent argued that the award passed by the learned Labour Court was perfectly legal and justified. She argued that workman had actually worked for more than 240 days in a calendar year immediately preceding the date of his retrenchment. She has referred to the details about the working period of the workman and has submitted that in all the workman had worked for 333 days yet the petitioners did not make compliance of Section 25-F of the Act. She argued that even if Khangar Singh, Radhey Shyam and Vimlesh Kumar were reinstated in service of the petitioners, the provisions of Section 25-G of the Act cannot be given go bye if the respondent wanted to do away with the service of the petitioners. As regards resignation, it was argued that the respondent submitted the said letter dated 30.4.1986 because he was not keeping well and that was intended to be a leave application and not resignation. In any case, the petitioners themselves have engaged the respondent workman again in the month of May, 1986 and as per the details of the working days of the respondent furnished by the petitioners, the respondent has been shown to have worked for them 23 days in the

month of May, 1986. Besides the petitioners management has also not produced any evidence as to in what manner resignation of the respondent was accepted.

Learned counsel for the respondent relied upon a Division Bench judgment of this Court in Khangar Singh vs. State of Rajasthan (D.B.Civil Writ Petition No.688/88) decided on 13th May, 1992 for the proposition that the remedy of reinstatement should follow the invalidation of the order of removal. Learned counsel also relied on judgment of the Hon'ble Supreme Court in Bhagwati Prasad vs. Delhi State Mineral Development Corporation, A.I.R. 1990 S.C. 373 on the point that artificial breaks created by the management from the service of the workman for the short period are liable to be ignored.

I have given my thoughtful consideration to the argument of the learned counsel for the parties and perused the record.

A perusal of the award would reveal that 30th April, 1986 was not the first time when the workman resigned and was thereafter engaged. The case of the management in their reply to

the statement of claim was that the workman was initially engaged @ 15 per day in the month of August, 1985 and then he resigned from service on 15th October, 1985 and thereafter he was again engaged in the month of November, 1985 and surprisingly thereafter he again resigned in the month of 30th April, 1986 and then he was engaged in the month of May, 1986 itself during which month he worked for 130 days. He continued to work thereafter till 6th October, 1986. What is therefore more than evident from the facts of the case are that the resignation was only a ploy adopted by the management to give an artificial break in the service of the workman so that he may not eventually set up his claim for regularization in service by claiming continuity of work. Although the reasonings of the learned Labour Court that letter dated 30.4.1986 cannot be accepted as a resignation because no order accepting the resignation has been produced on record cannot be appreciated but at the same time the fact remains that resignation in the immediate past and then re-engagement soon thereafter could at best be taken as break in service. In so far as however computation of 240 days for the purpose of compliance of Section 25-F of the Act is concerned, the validity of the removal of the workman would nonetheless be liable to be examined by ignoring such artificial breaks and counting the period 240 days with reference to the date

on which the workman was lastly removed proceeding backwards within 12 preceding calendar months. The evidence on record clearly suggest that the workman had completed more than 240 days in the calendar year.

Coming now to the question that the respondent ought not to have been reinstated in service and the learned Labour Court ought not to have directed reinstatement of the workman in service and should have rather granted him a lump sum compensation in lieu of reinstatement, it should be noted that the case of the workman is that he was removed from service on 6.10.1986 yet he took steps enormously delayed for getting his dispute referred to the learned Labour Court which was finally referred by the notification of the government dated 11th July, 1995 . A long period of nine years was thus consumed in making of the reference. The award itself was passed more than 15 years after the date of his removal on 28.2.2001 because the matter remained pending before the learned Labour Court for more than five years. Now the present petition is being disposed of in the end of the year 2006. Although, as against the Division Bench judgment cited by the learned counsel for the respondent in Khangar Singh supra, the learned counsel for the petitioners has cited Sukhvinder Kaur, supra wherein their Lordships

of the Hon'ble Supreme Court awarded a sum of Rs.30,000/- as lump sum compensation in lieu of reinstatement. But that is not the solitary case and the position of law has undergone a major shift ever since, the judgment in Khangar Singh was delivered in the year 1992.

This Court in Vikash Adhikari & Anr. vs. Judge, Labour Court, Bikaner & Anr. (S.B.Civil Writ Petition No.473/2001) decided on 20th November, 2006 on consideration of the similar arguments observed as under :-

> "There are certain judgments from this Court as well on the same subject matter which provides for award of lump sum compensation in lieu of reinstatement in appropriate cases. Their Lordships of Hon'ble the Supreme Court on this aspect have evolved very many guiding principles in number of judgments. Some of these judgments have been delivered in Rolasthan Rohan Vs. Central Industrial Tribunal, 1995 SCC (L&S) 142, Gujarat State Road Transport Corporation vs. Mulluamr, 1995 SCC (L&S), Surjeet Ghosh vs. UCCO Bank, 1995 SCC(L&S) 529, Gorabha Corporating Marketing Vs. Presiding Officer , LLR 1996 (1) 644, Ratan Singh vs. Union of India, 1998 SCC(L&S) 170, Dharmveer Singh vs. State of Rajasthan, WLC (Raj.) 1999, 301(DB), Hindustan Tin Works Pvt. Ltd. Vs. Employees of Hindustan Tin Works Pvt. Ltd. , AIR 1979 SC 95, Chandu Lal vs. The management of M/s. PAN American World Airways, AIR 1985 SC 1128, Sain Steel Producdts vs. Naipal Singh & Ors. , AIR 2001 SCW 2426, O.P.Bhandari vs. Indian Tourism Development Corporation Ltd. & Ors. , (1986) 4 SCC 337, Arjun Singh & 4 Ors. Vs. Labour Court,Jodhpur & Ors., 2004(4) WLC (Raj.) 145, U.P. State Road Transport corporation vs. Man Singh, 2006(7) SCC 752 and Nagar Mahapalika vs. State of U.P. & Ors. , AIR 2006 SCW 2497. These cases have been followed by this Court in number of Division

> Bench judgments in Resident Engineer Housing Board , Kota vs. Lakpath and Anr., reported in 2003(3) WLC (Raj.), 564, in State of Rajasthan vs. Rashid Mohammad in D.B.Civil Writ Petition No.406/2000, reported in 2004 (5) WLC (Raj.), 463, in Arjun Singh & Ors. vs. Labour Court,Jodhpur, reported in 2004(4) WLC(Raj.), 145 and in Ram Niwas vs. Mining Engineer(D.B.Civil Special Appeal (Writ) No.270/2003), decided on 24th April, 2003.
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> Principles of law which can be culled out from the aforesaid judgments are that relief of lump sum compensation in lieu of reinstatement may be awarded (i) when the nature of appointment of the workman is only casual and temporary and such appointment was not made by following due process of law(ii) when there had been delay in making of reference(iii) when a long time has otherwise elapsed from the date of alleged retrenchment till passing of the award and subsequently till deciding the matter by the Court (iv) when length of service of the workman has not been much (v) when the workman was engaged in a temporary project or scheme which has come to end (vi) when the management does not have any post or means to accommodate and continue the workman in there services. Normal rule of reinstatement can be departed in favour of the payment of lump sum compensation in any appropriate case where the matter falls in any of these broad categories. "

Moreover, appointment of the workman was not made by any acceptable mode of recruitment but it was only on daily wages basis and initially for three months which came to be extended from time to time till he was removed.

In the peculiar facts of the case, however, ends of justice would be met by directing the petitioners to pay to the

respondent a lump sum compensation of Rs.50,000/- in lieu of reinstatement. The award passed by the learned Labour Court is accordingly modified.

In the result, the writ petition is partly allowed and the award passed by the learned Labour Court is accordingly modified. There shall be however no order as to costs.

(MOHAMMAD RAFIQ),J.